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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,815	11/10/2000	Edwin D. Ebner	7754-P	5777
21494	7590	07/18/2005	EXAMINER	
FURGANG & ADWAR 2 CROSFIELD AVENUE WEST NYACK, NY 10994			GANEY, STEVEN J	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 07/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	09/710,815	EBNER, EDWIN D.	
	Examiner	Art Unit	
	Steven J. Ganey	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on July 27, 2004 & October 21, 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-14 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-14 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Papers #1 & #2</u> |

DETAILED ACTION

1. The finality of the Office action mailed June 2, 2004 is hereby withdrawn in view of the new ground of rejection set forth below.
2. The indicated allowability of claims 11-14 and 24 is withdrawn in view of the newly discovered references to Barber, Hawkes, Sanderson and Winberg et al. Rejections based on the newly cited references follow.

Response to Amendment

3. The amendments filed July 27, 2004 and October 21, 2004 have been entered. However, the directions for the entry of the amendments were defective. The inaccuracy was in identifying the location of the paragraphs and/or page designated. Applicant directed the location of the replacement paragraphs based on the marked-up copy of the substitute specification filed June 15, 2001, instead of the clean unmarked-up copy. Therefore, the location of the paragraphs and/or page number designated did not correspond to the clean copy of the substitute specification. The examiner has made the proper changes to the amendments and attached a copy of the initialed papers.

Specification

4. The disclosure is objected to because of the following informalities: Applicant is not consistent in defining the input and output ports of the valve. Applicant flips back and forth between defining them as inlet and outlet ports or input and output ports. This is confusing and

Art Unit: 3752

indefinite since this type of flip-flopping is used in the claims also and provides antecedent basis problems. All references to the valve should be described using the designations --input-- and --output-- not “inlet” and “outlet”, note specifically page 6, lines 1, 9, 10, 12, 13, page 7, line 20, and page 8, lines 19 and 20

On page 8, line 19, the numeral “31” should be --33-- to clearly define the exhaust input leg of the Y-shaped valve.

On page 10, lines 6, 8 and 10, the word “port” should be changed to --hose-- to clearly define “hose 18”.

On page 10, line 13, the phrase “output port” should be changed to --outlet hose-- to clearly define the outlet hose 18.

Appropriate correction is required.

Claim Objections

5. Claims 11-14 objected to because of the following informalities: In claim 11, lines 2 and 4, the word --exhaust-- should be inserted before the word “output” in order to maintain proper antecedent basis throughout the claim. In claim 12, line 3, the phrase “said valve” should be changed to --said planar valve member-- since this is actually what is being manipulated. In claim 13, line 2, the word --planar-- should be inserted before the phrase “valve member” in order to clearly define the invention and maintain proper antecedent basis. In claim 14, line 2, the phrase --at least two-- should be inserted before the phrase “exhaust output ports” in order to maintain proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 11-14 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, line 6, the phrase “inlet and two exhaust outlet” lacks antecedent basis and should be changed to --input port and said at least two exhaust output ports--.

In claim 11, lines 8 and 9, the phrase “said first or second exhaust output ports” lacks antecedent basis and should be changed to --said at least two exhaust output ports--.

In claim 12, raises double inclusion issues since it appears to be defining a separate limitation for pivotally moving the planar valve member, however, this is actually further defining the “means for pivotally moving said planar valve member” and should be rewritten to be properly defined.

In claim 14, line 2, the recitation of the input port and the at least two exhaust output ports are joined by a substantially Y-shaped valve is indefinite and raises double inclusion issues since they comprise the Y-shaped valve and are the Y-shaped valve.

In claim 14, line 3, “said pipe” lacks antecedent basis and it appears that it is actually one of exhaust output ports of the Y-shaped valve that the guide means is secured on when reading the specification.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 11-14 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Barber.

Barber shows a substantially Y-shaped valve 28 comprising an input port 30 and two output ports 32/34; a planar shutter body valve member 46 pivotally connected on pivot pin 62 and controlled by valve rod 70 connected to a cable 72 for moving the valve member between first and second positions.

10. Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Winberg et al.

Winberg et al shows a substantially Y-shaped valve 16 comprising an input port 18 and two output ports 22/24; a planar valve member 26 pivotally connected on pivot pin 48 and controlled by valve rod 58 for moving the valve member between first and second positions.

11. Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Winberg et al.

Winberg et al shows a substantially Y-shaped valve 16 comprising an input port 18 and two output ports 22/24; a planar valve member 26 pivotally connected on pivot pin 48 and controlled by valve rod 58 for moving the valve member between first and second positions.

12. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Sanderson.

Art Unit: 3752

Sanderson shows a substantially Y-shaped valve 10 comprising an input port 20 and two output ports 21/22; a planar valve member 27 pivotally connected on pivot pin 31 and controlled by valve rod 36 for moving the valve member between first and second positions.

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. Claims 11 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Hawkes.

Hawkes shows a substantially Y-shaped valve 10 comprising an input port 22 and two output ports 18/20; a planar valve member 12 pivotally connected on pivot pin 26 and controlled by valve rod 28 for moving the valve member between first and second positions.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barber.

Barber discloses all the featured elements of the instant invention except for the guide means for guiding the cable. Note applicant's admission on page 9, lines 9 and 11, where it is

Art Unit: 3752

stated that such guide means 49 are well known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a guide means for the cable in the apparatus of Barber, in such a modification would ensure a smooth operation of the cable and would prevent the cable from binding or becoming entangle and in view of applicant's own admission of using such guide means in the art.

Conclusion


17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ricci and Meakin show valves controlled by cables. Peterson and Luger show Y-shaped diverter valves.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (571) 272-4899. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel, can be reached on (571) 272-4919. The fax phone number for this Group is (571) 273-8300.

sjg

7/11/05


STEVEN J. GANEY
PRIMARY EXAMINER
7/11/05